

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:

“GROUP PIER” STANDARDS, EXPRESS)
APPROVAL TO USE THE RIPARIAN ZONE) Administrative Cause
OF ANOTHER PERSON, AND OTHER) Number: 08-065W
CHANGES ON PUBLIC FRESHWATER) (LSA Document #09-856(F))
LAKES)

RULE PROCESSING, REPORT OF PUBLIC HEARINGS AND RECOMMENDATION FOR FINAL ADOPTION

1. RULE PROCESSING

For consideration are amendments proposed to 312 IAC 11-2 through 312 IAC 11-4 which assist with the implementation of IC 14-26-2 (sometimes referred to as the “Lakes Preservation Act”) in the management of “public freshwater lakes”. Substantive standards would be provided for the review of “group piers”. Written approval and not mere acquiescence would be required to use the riparian zone of another to place a structure. Potentially confusing and unnecessary language cross-referencing to navigable waters would be eliminated. Other technical changes would be made.

The Natural Resources Commission gave preliminary adoption to the rule proposal during its meeting of September 16, 2008. As reported in the pertinent portions of the minutes:

James Hebenstreit, Assistant Director of the Division of Water, presented this item. He said the rule proposal addresses group piers, riparian zones and other matters on public freshwater lakes. “Back in April, we had a draft rule that dealt with piers on both public freshwater lakes and navigable waterways.” He said the Advisory Council “split” the proposal, and the portion pertaining to navigable waters was subsequently considered within Administrative Cause No. 08-009L.

The portion of the amendments addressing public freshwater lakes was forwarded to the Lakes Management Work Group (the “LMWG”) for further review. Hebenstreit said the LMWG commented on some of the proposed changes, but there are “still other issues under discussion” by the LMWG that will probably come later to the Commission “with additional rules related to piers.”

Hebenstreit said this proposed rule is “our first effort to deal with group piers” in terms of particular substantive standards. With rule amendments effective in 2005, the Commission removed group piers from those temporary piers which qualified for a general license. The result is that a “group pier” is now required to complete full licensure review before placement. Since 2005, “we have struggled to come up with some written standards for how [group pier permits] are reviewed.” The rule proposal is based on the experiences from the last two years in dealing with group piers. “Most of the criteria that are contained in the rule are reflective of the kinds of issues that we’ve seen raised by opponents and proponents of [group] piers.”

Hebenstreit said the proposed amendments would require that the DNR in reviewing license applications to consider the boundaries of a landowner’s “riparian zone, which means in many cases we are going to look at the location of the pier relative to the extension of people’s property lines.” He said the rule reflects the Department would rely on Information Bulletin #56 adopted by the Commission last year.¹

Hebenstreit said an amendment is also proposed to the definition of “group pier” to add a broader definition of a “club”. This amendment would be set forth in 312 IAC 11-2-11.5(9).

Hebenstreit said the addition of 312 IAC 11-4-8 is the “guts” of the rule proposal. This section would list the evaluation criteria for a group pier application. Included are criteria for a mandatory set back of five feet from the extension of the property line, which “we don’t currently have,” and, additionally, there would be “an indication that we prefer a ten foot setback.” Hebenstreit said a restriction is proposed that a group pier could only cover or extend across one-half of the total frontage of the property. He then recommended that preliminary adoption be given to the proposed rule amendments as presented.

Mark Ahearn requested clarification regarding 312 IAC 11-4-8(c)(5). “We are saying that the applicant must demonstrate the license doesn’t interfere in the interest of a neighboring landowner. Is the word ‘interest’ in any way qualified? Is this inviting controversy or litigation or something that ends up in front of the judges? Are we looking for the word ‘reasonable’?”

Hebenstreit said, “By their very nature, group piers have a whole package of controversy with them.”

Steve Lucas asked, “Would it be helpful to say ‘interfere with the legal interests’? ‘Legal interest’ is what I think we were looking for.”

Ahearn replied, “I’m not offering a comment. I just don’t want it to be an invitation.”

¹ Another rule proposal pertaining to public freshwater lakes, and in particular to a consideration of aerators, was advancing in what would become LSA Document #806. Because the latter initiative appeared to be progressing more rapidly, the amendments to cross-reference the guidance for determining riparian zones in Information Bulletin #56 were moved to LSA Document #806.

Stautz added, "I think 'legal' would be helpful, because otherwise it could apply to a general view or general aesthetics."

Phil French asked about the demographics of group piers, the number of group piers, and the number of slips. "Is that another issue?"

Lucas responded that existing facilities "are already okay under a 'lawful nonconforming use' or what some people might say is 'grandfathered'. There are a whole lot of those out there, but if the owners of group piers modify them then they would come" under this proposed rule. Lucas said that when new rules are written, they are typically "just prospective. So, what's already out there, [the proposed rules] don't directly address."

French asked whether the issue of group piers and the concerns of "funneling" would be addressed. Hebenstreit said that the LMWG has discussed this issue. "Essentially you have people raising the issue of are we exceeding the carrying capacity of a lake." He explained that the Department, as an entity, opens public access sites on all public freshwater lakes so they're available to everybody, is a leader in funneling because we started it." French then asked, "So, we are going to deal with that at a different point? We defined 'group piers', but we are going to move along on with densities and all that at a different time?" Hebenstreit answered in the affirmative.

Ahearn asked whether, by the language in the amendments proposed in 312 IAC 11-4-8(d)(1)(B), "we are saying that the Department would be empowered to deny a license application greater than ten feet and less than 20 feet. The language 'preferred' is kind of a precatory language concept. Preferred by whom? It is not really language of mandate. It's not language that grants power."

Lucas commented, "I think that's a fair question." He suggested the structure of the rule language could be modified to address the concern.

Hebenstreit responded, "As I reflected earlier, a lot of this is almost a codification of things that have gone through adjudication, including things that have gone through the AOPA Committee. There were a couple of cases where the conservation officers essentially testified to this kind of language."

Lucas agreed that the language "doesn't say it's a mandate.... Ultimately, it would be up to interpretation. It's going to be an interpretation by an [administrative law judge], by the AOPA Committee, or by a court." For the range "between having the full 20 feet of width, as opposed to ten feet of width, you'd be looking to the advice of professionals in the field. I'd think you'd be looking primarily to the advice of...Conservation Officers" regarding safety concerns.

Mark Ahearn noted that he wanted to "make sure" the proposed rule would give the Department the authority that "we think it purports to give."

Jane Stautz added, “Along those lines, should we have it read ‘a minimum’ instead of ‘preferred’? Would there be any circumstances where we would want less than that?”

Ahearn said, “I think what this means is the minimum is ten. That’s the ‘required’. The Department is entitled to exercise its discretion up to 20 feet.”

French said, “I think the Department leaves itself under a lot of cost and legal research to determine what is the difference between ten and 20.” He added, “Why not just set the number and let someone file a petition to change it.”

Ahearn said the proposed rule contemplates the Department can exercise its discretion between ten feet and 20 feet. As written, the language “doesn’t look like a real grant of authority.”

Lucas said the proposed rule could be restructured in an effort to implement the recommendations by Ahearn and Stautz. He thought these changes would be ones of rule tenor and not intent. “I’d share the restructured wording with them and anyone else on the Commission who wanted, if this approach is acceptable.”

The Chair said, “It is.” He then called for a motion.

Stautz asked for clarification as to whether the motion would include the suggested amendments. The Chair answered in the affirmative.

Mark Ahearn moved to give preliminary adoption of amendments to rules to address group piers, riparian zones, and related matters on public freshwater lakes with recommended change to 312 IAC 11-4-8(d)(1)(B) to require at least five feet of clearance on both sides of a riparian line, as well as to allow the Department, in its discretion, to require as much as ten feet. In addition, restrictions on impacts to neighboring riparian owners would be limited to their “legal” interests. Phil French seconded the motion. Upon a voice vote, the motion carried.

A “notice of intent” to adopt the proposed rule amendments was published in the Indiana REGISTER on October 28, 2009 as LSA Document #09-856. The notice identified James J. Hebenstreit, P.E., Assistant Director of the DNR’s Division of Water, as the “small business regulatory coordinator”.

As specified by Executive Order, proposed fiscal analyses of the rule proposal were submitted to the Office of Management and Budget on October 30. In a May 13, 2010 letter, OMB approved the proposed fiscal analyses.

On May 12, 2010, the Division of Hearings submitted a copy of the proposed rule and corresponding “Economic Impact Statement” to the Legislative Services Agency. On

May 13, LSA provided an intended date of posting of May 26, 2009. On May 14, the Division of Hearings provided LSA with a “Notice of Public Hearing” (with a “Justification Statement”). Later on May 14, LSA issued to the Commission an “authorization to proceed” with the rule proposal.

In accordance with IC 4-22-2.1-5(c)(2), a copy of the proposed rule and the statement concerning rules affecting small business were submitted to the Indiana Economic Development Corporation on May 17, 2010. On June 9, 2010, IEDC submitted written comments to the Commission which stated in substantive parts:

Pursuant to IC 4-22-2-28, the Indiana Economic Development Corporation (“IEDC”) has reviewed the economic impact analysis for small business associated with rule changes contained in LSA Document 09-856 and proposed by the Indiana Natural Resources Commission (“NRC”). The proposed rule amends 312 IAC 11 governing the placement of structures on public freshwater lakes to provide new standards pertaining to the placement of group piers. The proposed rule requires written approval, and not mere acquiescence, from a riparian owner for a person who is not a riparian owner to place a structure

The economic impact statement prepared by the NRC indicates that the proposed rule would apply to approximately four to six small businesses. The NRC estimates that the total annual cost to comply with the provisions of the new rules will be \$100 to \$200 per business. Therefore the maximum total annual cost for compliance with the proposed rule is approximately \$1,200.

The IEDC does not object to the economic impact on small businesses associated with the proposed rule. The costs associated with the proposed rule appear modest and the NRC has determined that the provisions of the proposed rules are the most cost effective means of carrying out its responsibilities. If you have any questions about the comments contained here please contact me at 232-8962 or raspberry@iedc.in.gov.

The Commission responded to the IEDC’s comments on the same day: “Thank you for your timely and thorough comments under IC 4-22-2-28. Since you have commented favorably upon the agency’s fiscal analysis, and have suggested no alternative, the Department of Natural Resources will recommend that the Natural Resource Commission move forward with consideration for final adoption of the language published for preliminary adoption.” IEDC’s full comments were made available for inspection and

copying in the Commission's Division of Hearings office and on the Commission's website on June 9, 2010. Copies of IEDC's comments were also available at the public hearing held on June 18, 2010.

A public hearing on the rule proposal was scheduled for June 18, 2010 in the DNR's Northeast Regional Headquarters, 1353 South Governor's Drive, Columbia City, Indiana. The site was chosen because of its proximity to numerous public freshwater lakes. Notice of the public hearing and the text of the proposed amendments were posted in the Indiana REGISTER on May 26, 2010. This notice included the statement under IC 4-22-2.1-5 concerning rules affecting small businesses. The notice also included information required under IC 4-22-2-24. Notice of the public hearing with similar information was published on May 21, 2010 in the Indianapolis DAILY STAR, a newspaper of general circulation published in Marion County, Indiana and on the same day in the Warsaw TIMES-UNION, a newspaper of general circulation published in Kosciusko County, Indiana. In addition, notice of the public hearings and a summary of the proposed rule changes were published on the calendar of the Commission's website.

2. REPORT OF PUBLIC HEARINGS AND COMMENTS

A. Report of Public Hearing

The public hearing was convened as scheduled in DNR's Northeast Regional Headquarters, 1353 South Governor's Drive, Columbia City, Indiana. Appearing as representatives of the Department of Natural Resources were James Hebenstreit, P.E., Assistant Director of the DNR's Division of Water, and Major Felix Hensley, Indiana State Boating Law Administrator. Eleven other interested persons, including both private citizens and DNR employees, were also present.

There was an informal discussion of the proposed rules and of other rules or statutes governing public freshwater lakes, including several questions pertaining to enforcement. Comments directed to the proposed amendments are summarized:

Stephen Snyder, a resident and attorney with offices in Syracuse, expressed concerns that the new limitation in 312 IAC 11-4-8(c)(6) to 50% of “the width of the applicant’s shoreline or water line” for group piers could prove to be overly restrictive. He acknowledged that in implementing the Lakes Preservation Act, the Commission was charged with “balancing” the interests of the public and riparian owners, but this provision may not adequately consider private property rights. Snyder referenced IC 14-15-3-17, enacted ten years after the original Lakes Preservation Act, as a possible counterweight to protect riparian rights from disruptive usage by some members of the boating public. This statutory section now provides in part:

Sec. 17. (a) A person operating a motorboat may not approach or pass within two hundred (200) feet of the shore line of a lake or channel of the lake at a place or point where the lake or channel is at least five hundred (500) feet in width, except for the purpose of trolling or for the purpose of approaching or laving a dock, pier, or wharf or the shore of the lake and channel.

(b)...[A] person operating a motorboat may not approach or pass within two hundred (200) feet of the shore line of a lake or channel of the lake at a speed greater than idle speed....

Snyder expressed concerns for the standard for traffic congestion in 312 IAC 11-4-8(c)(2)(B) that would be based upon a lake’s “carrying capacity”. He suggested that a major impact on carrying capacity resulted from public access sites. James Hebenstreit responded that if carrying capacity were to be invoked on a particular lake, the DNR would be properly required to consider the impact of a public access site.

Snyder reflected that the change in 312 IAC 11-3-1(b)(9) to require “written approval” by a riparian owner for use by another person of a riparian zone, and not mere “acquiescence”, might have unforeseen consequences. Off-lake property owners sometimes place piers within the waters of a public freshwater lake and adjacent to the end of a roadway. Typically, these roadways are only easements or rights-of-way, and ownership remains in the adjacent landowners to the center of the roadway. This amendment would mean only the adjacent landowners could give approval, and the approval would need to be in writing. “That’s not likely to happen.”

Greg Gaither of North Webster said he believed the rule amendments were “a step in the right direction.” With advancing public usage of the public freshwaters lakes, the shorelines were becoming ever more crowded. “There’s really no safety zone anymore.”

John Osborn of North Webster said the use of a “group pier” by multiple off-shore owners could help reduce shoreline crowding while providing persons with a reasonable opportunity to have boat access to a lake. He asked about permitting procedures and was informed they were performed primarily through the DNR’s Division of Water.

B. Comments from the Lake Management Work Group

The Lake Management Work Group was established by the Indiana General Assembly in 1997 to receive citizen comments and to help develop solutions to problems faced by the State’s public freshwater lakes. Membership consists of four members of the Indiana General Assembly (bipartisan participation from the Senate and the House of Representatives), as well as agency professionals and citizen appointees. The Lake Management Work Group has been reauthorized periodically and was reauthorized during the most-recent session of the Indiana General Assembly through July 2011. SEA 1040.

In a letter dated June 15, 2010, **Indiana State Representative and Chair of the Lake Management Work Group, Nancy Dembowski**, wrote:

We strongly support the adoption of the proposed rule as presented in LSA Document #09-856.

3. RECOMMENDATION FOR FINAL ADOPTION

The proposed rules as published for preliminary adoption, and as included in Exhibit “A”, appear to be lawful and ripe for preliminary adoption. In several instances, the amendments would make important policy choices. The administration of public freshwater lakes is today an active arena for litigation, making the policy choices particularly sensitive.

The hearing officer has reservations concerning two of the subjects addressed in the public hearing. Acknowledging that these are policy calls for the Commission, they are presented to help support a thorough evaluation.

The first item where the hearing officer has reservations is the new limitation in 312 IAC 11-4-8(c)(6), for group piers, to one-half of the width of the applicant's shoreline. Whether the argument regarding legislative intent and the application of IC 14-15-3-17 is found compelling, the new 50% limitation is a dramatic change from current practice. Disputes between riparian neighbors based on shoreline crowding result frequently in litigation, but the disputes typically arise because a person seeks to use 90% or perhaps 120% of riparian shoreline, not merely 50%. The consequences of the new limitation can be particularly restrictive along irregular shorelines.

The second item is the reference in 312 IAC 11-4-8(c)(2)(B) to "carrying capacity". The only context in which an existing carrying capacity has been identified is for the special circumstances at the mouth of Burns Portage Waterway on Lake Michigan. Neither the Waterway nor Lake Michigan is a "public freshwater lake". On its face, the clause applies only where an analysis for a carrying capacity is published before licensure is initiated, so the rule language currently has no application. This clause may raise unneeded questions. If a carrying capacity is later published, the rule could be amended to implement the restriction. Inclusion in the current rule may be premature.

To avoid the confusion that can arise from a summer amendment to rules implementing the Lakes Preservation Act, the hearing officer recommends deferral of the effective date of the amendments until January 1, 2011.

With this background, Exhibit "A" is presented for consideration as to final adoption.

Dated: June 29, 2009

Stephen L. Lucas
Hearing Officer

Exhibit “A”

TITLE 312 NATURAL RESOURCES COMMISSION

Final Rule

LSA Document #09-856(F)

DIGEST

Amends 312 IAC 11-2-11.5, 312 IAC 11-3-1, and 312 IAC 11-3-3 and adds 312 IAC 11-4-8 governing the placement of structures on public freshwater lakes to provide new standards pertaining to the placement of group piers, to require written approval, and not mere acquiescence, from a riparian owner for a person who is not a riparian owner to place a structure, to eliminate potentially confusing and unnecessary language cross-referencing to navigable waters, and to make technical and clerical changes. Effective on January 1, 2011.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

312 IAC 11-2-11.5; 312 IAC 11-3-1; 312 IAC 11-3-3; 312 IAC 11-4-8

SECTION 1. 312 IAC 11-2-11.5 IS AMENDED TO READ AS FOLLOWS:

312 IAC 11-2-11.5 “Group pier” defined

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-26-2-23

Affected: IC 14-15; IC 14-26-2

Sec. 11.5. “Group pier” means a pier that provides docking space for any of the following:

- (1) At least five (5) separate property owners.
- (2) At least five (5) rental units.
- (3) An association.
- (4) A condominium, cooperative, or other form of horizontal property.
- (5) A subdivision or an addition.
- (6) A conservancy district.
- (7) A campground.
- (8) A mobile home park.
- (9) A ~~yacht~~ club **that has, as a purpose, the use of public waters for:**
 - (A) boating;**
 - (B) fishing;**
 - (C) hunting;**
 - (D) trapping; or**
 - (E) similar activities.**

(Natural Resources Commission; 312 IAC 11-2-11.5; filed Jan 7, 2005, 2:10 p.m.: 28 IR 1681; readopted filed Aug 4, 2005, 6:00 p.m.: 28 IR 3661)

SECTION 2. 312 IAC 11-3-1 IS AMENDED TO READ AS FOLLOWS:

312 IAC 11-3-1 General licenses for qualified temporary piers and similar temporary structures; dry hydrants; and glacial stone refaces

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-26-2-23

Affected: IC 14-15; IC 14-26-2

Sec. 1. (a) The placement and maintenance of a:

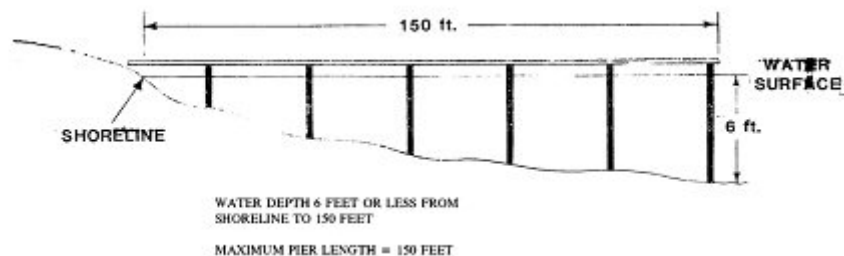
- (1) temporary structure;
- (2) dry hydrant; or
- (3) glacial stone reface;

is authorized without a written license issued by the department under IC 14-26-2 and this rule if the temporary structure, dry hydrant, or glacial stone reface qualifies under this section.

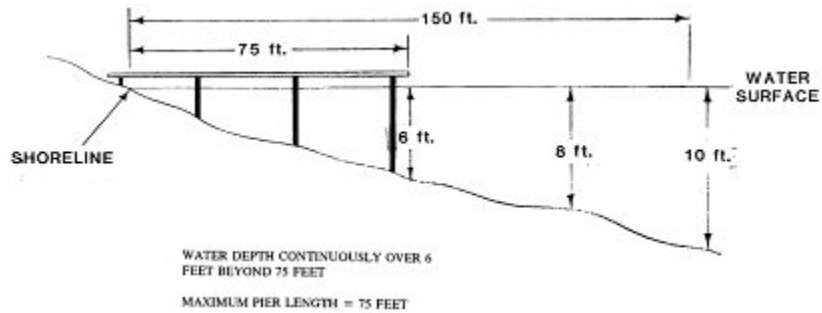
(b) In order for a temporary structure to qualify, the structure must satisfy each of the following:

- (1) Be easily removable.
- (2) Not infringe on the access of an adjacent landowner to the public freshwater lake.
- (3) Not unduly restrict navigation.
- (4) Not be unusually wide or long relative to similar structures within the vicinity on the same public freshwater lake.
- (5) Not extend more than one hundred fifty (150) feet from the ~~legally established or average normal waterline or shoreline or water line.~~
- (6) If a pier, not extend over water that is continuously more than six (6) feet deep to a distance of one hundred fifty (150) feet from the ~~legally established or average normal waterline or shoreline or water line.~~
- (7) Not be a marina.
- (8) Not be a group pier.
- (9) Be placed by **a riparian owner** or with the ~~acquiescence~~ **written approval** of a riparian owner.

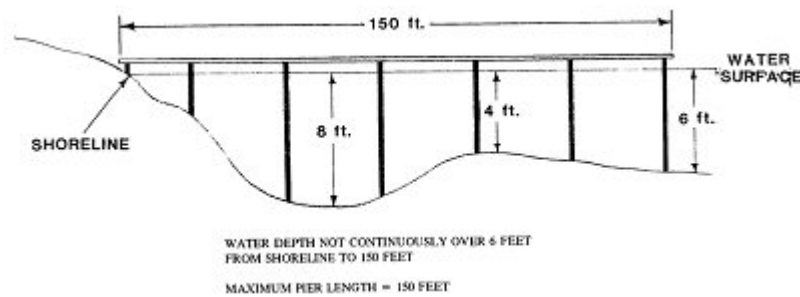
(c) Illustrations of maximum lengths for a pier or similar structure that may qualify under subsection (b) are as follows:



Where the water depth is six (6) feet or less from the shoreline to one hundred fifty (150) feet from the shoreline, the maximum pier length is one hundred fifty (150) feet.



Where the maximum water depth is continuously more than six (6) feet beyond seventy-five (75) feet from the shoreline, the maximum pier length is seventy-five (75) feet.



Where the maximum water depth is not continuously over six (6) feet from the shoreline, the maximum pier length is one hundred fifty (150) feet.

(d) In order for the placement, maintenance, and operation of a dry hydrant to qualify, the hydrant must satisfy each of the following:

- (1) Be sponsored or owned by a volunteer or full-time fire department recognized by the public safety training institute.
- (2) Be readily accessible from an all-weather road, public access site, or similar area.
- (3) Have a diameter of at least six (6) inches.
- (4) Be constructed of PVC pipe or a similar nontoxic material.
- (5) Extend no more than one hundred fifty (150) feet from the waterline or shoreline.
- (6) Have all portions of the hydrant and its in-lake accessories be at least five (5) feet below the legally established or average normal water level.
- (7) Be marked with a danger buoy, which conforms to 312 IAC 5-4-6(a)(1), at the lakeward end of the hydrant.
- (8) Be equipped with a screen or straining device on the lakeward end.
- (9) Glacial stone or riprap only may be placed in or on the lakebed for either of the following:
 - (A) Bedding the intake pipe.
 - (B) Straining the intake water.
- (10) Be approved by the riparian landowner.

(e) In order for the placement of glacial stone on the lakeward side of a seawall ~~that is located within or along the waterline or shoreline of a public freshwater lake~~ to qualify, the glacial stone reface must satisfy each of the following:

- (1) The seawall reface must be comprised exclusively of glacial stone.
- (2) The reface must not extend more than four (4) feet lakeward of the ~~waterline or shoreline~~ **or water line** at the base of a lawful seawall.
- (3) A walk or structural tie must not be constructed on the existing seawall in combination with the glacial stone reface.
- (4) An impermeable material must not be placed behind or beneath the glacial stone reface.
- (5) Filter cloth placed behind or beneath the glacial stone reface must be properly anchored to prevent displacement or flotation.
- (6) Erosion from disturbed areas landward of the ~~waterline or shoreline~~ **or water line** must be controlled to prevent its transport into the lake.

(Natural Resources Commission; 312 IAC 11-3-1; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2223; filed Jan 23, 2001, 10:05 a.m.: 24 IR 1614; filed May 25, 2004, 8:45 a.m.: 27 IR 3062; filed Jan 7, 2005, 2:10 p.m.: 28 IR 1681; readopted filed Aug 4, 2005, 6:00 p.m.: 28 IR 3661)

SECTION 3. 312 IAC 11-3-3 IS AMENDED TO READ AS FOLLOWS:

312 IAC 11-3-3 Individual licenses for structures that do not qualify for a general license

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-26-2-23

Affected: IC 14-11-4; IC 14-15; IC 14-26-2

Sec. 3. (a) Except as provided in section 1 of this rule and in subsection (c), a structure placed within the ~~waterline or shoreline~~ **or water line** of a public freshwater lake requires a written license issued by the department under IC 14-26-2 and this rule.

(b) Except as provided in 312 IAC 11-4-7, a structure that is located on a public freshwater lake:

- (1) more than one hundred fifty (150) feet; and
- (2) less than two hundred (200) feet;

from the ~~legally established or average normal waterline or shoreline~~ **or water line** requires a written license under IC 14-26-2, this rule, IC 14-15-7-3, and 312 IAC 5-4. The department may provide that the multiple licensing requirements of this subsection be satisfied with a single written license.

(c) Except as provided in 312 IAC 11-4-7, a structure that is located:

- (1) on a public freshwater lake; and
- (2) not less than two hundred (200) feet from the ~~waterline or shoreline~~ **or water line**;

does not require a license under IC 14-26-2 and this rule, but the structure does require a license under IC 14-15-7-3 and 312 IAC 5-4. Only a navigation aid or water recreation structure can be licensed under 312 IAC 5-4.

(d) The director or a delegate shall not issue a license under this rule except upon a written determination that shows the following:

(1) The license, including conditions attached to the license, conforms ~~with~~ **to** IC 14-26-2 and this rule. In making the determination, there shall be a determination that issuance of the permit would not result in significant environmental harm to the public freshwater lake.

(2) The applicant has demonstrated that an owner of each parcel of real estate, reasonably known to be adjacent to the real estate described in subsection (e)(2), has been notified under IC 14-11-4 and 312 IAC 2-3.

(e) An application for a license under this section must include a description of the following:

(1) The permanent structure, including plans and specifications of sufficient detail for the department to evaluate the project under IC 14-26-2 and this rule.

(2) The real estate:

(A) on which the structure would be located; or

(B) that the structure would benefit.

(f) Examples of a structure that requires a written license under this section include the following:

(1) A marina.

(2) A group pier.

~~(2)~~ **(3)** A new seawall or a seawall refacing.

~~(3)~~ **(4)** An underwater beach.

~~(4)~~ **(5)** A boat well excavation, construction, or fill.

~~(5)~~ **(6)** A fish attractor.

~~(6)~~ **(7)** A pier that is supported by a structure permanently

~~(A)~~ mounted in, or

~~(B)~~ affixed to, the bed of the lake.

~~(7)~~ **(8)** A boathouse that is totally or partially enclosed on the sides. This structure ordinarily should be:

(A) placed over a boat well constructed landward of the ~~legally established or average normal waterline or shoreline~~ **or water line**; and

(B) constructed only after a permit is obtained to alter the ~~legally established or average normal waterline or shoreline~~ **or water line**.

~~(g) The requirements of this rule are in addition to the requirements of 312 IAC 6 for any public freshwater lake that is also a navigable waterway. (Natural Resources Commission; 312 IAC 11-3-3; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2224; readopted filed Aug 4, 2005, 6:00 p.m.: 28 IR 3661; filed Sep 14, 2005, 2:45 p.m.: 29 IR 465)~~

SECTION 4. 312 IAC 11-4-8 IS ADDED TO READ AS FOLLOWS:

312 IAC 11-4-8 Group piers

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-26-2-23

Affected: IC 14-15; IC 14-26-2-5

Sec. 8. (a) A person must not place a group pier along or within the shoreline or water line of a public freshwater lake unless the person obtains a written license from the department under this section.

(b) The applicant must demonstrate exercise of the license would not do any of the following:

- (1) Unreasonably impair the navigability of the public freshwater lake.**
- (2) Pose an unreasonable hazard to life or property.**
- (3) Violate the public rights described in IC 14-26-2-5.**
- (4) Interfere with the reasonable exercise of boating operations by the public.**
- (5) Interfere with the property interests of a landowner having property rights abutting the lake or rights to access the lake.**

(c) The department shall condition a license for a group pier so the placement, configuration, and maintenance of the pier as follows:

- (1) Provide a reasonable buffer zone between the pier and the:**
 - (A) portion of the lake two hundred (200) feet from the shoreline or water line; and**
 - (B) riparian zone of adjacent property owners to provide for reasonable navigation by the adjacent property owner and by the public. Except as otherwise provided in this clause, the department shall require at least five (5) feet of clearance on both sides of a riparian line (for a total of ten (10) feet). The department may require as much as ten (10) feet of clearance on both sides of a riparian line (for a total of twenty (20) feet) if, based upon the opinion of a qualified professional, additional clearance is required for reasonable navigation. The department may approve an exception to this clause where adjacent riparian owners use a common pier along their mutual property line, and the purposes of this clause are satisfied by waters elsewhere within their riparian zones.**
- (2) Do not result in unreasonable traffic congestion either:**
 - (A) in the immediate vicinity of the pier; or**
 - (B) to impair the carrying capacity of the public freshwater lake where the department has determined the carrying capacity in an analysis which is published before the license application is filed.**
- (3) Do not authorize structures that are likely to be hidden or obscured so as to pose a hazard to the public.**
- (4) Minimize disturbances to vegetation and sediments in close proximity to the shoreline or water line.**
- (5) Are unlikely to trap debris or redirect sediments or currents to cause erosion or sedimentation that is detrimental to navigation or to the property rights of other riparian owners.**
- (6) Avoid causing or appearing to cause appropriation of public water unnecessary to the reasonable exercise of riparian rights. A pier must not**

extend more than one-half (1/2) the width of the applicant's shoreline or water line. As used in this subdivision, "width" is determined by the straight line formed between the points located at intersections of the applicant's property lines with the shoreline or water line.

(Natural Resources Commission; 312 IAC 11-4-8)